

123 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MoGas Pipeline LLC

Docket No. CP06-407-005

ORDER ON COMPLIANCE FILING

(Issued May 30, 2008)

1. On May 12, 2008, MoGas Pipeline LLC (MoGas) filed First Revised Original Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 1 and an update on customer negotiations to comply with the Commission's May 7, 2008 Order on Compliance Filing (May 7 Order) requiring MoGas to file revised initial rates and safe harbor agreements for customers that do not have new contracts.¹ As discussed below, the Commission is accepting MoGas' tariff sheet effective June 1, 2008, as well as its update on customer contracts.

Compliance Filing

2. In its filing, MoGas states that its tariff sheet reflects rates consistent with the May 7 Order, which specified the billing determinants that MoGas should use to calculate its Zone 1 rates. Additionally, MoGas states that all of the Applicants' existing

¹ *MoGas Pipeline LLC*, 123 FERC ¶ 61,131 (2008). This proceeding involves the merger of Missouri Pipeline Co., LLC, and Missouri Gas Co., LLC, which are subject to the jurisdiction of the Missouri Public Service Commission, and Missouri Interstate Gas, LLC, which is subject to the jurisdiction of the Commission. Upon implementation of the merger, a new interstate pipeline will operate as MoGas. These pipelines are referred to herein as the "Applicants" or MoGas, as appropriate.

customers have entered into new contracts for interstate service over MoGas; therefore, there is no need for any existing customer to enter into a safe harbor agreement.²

3. Additionally, MoGas requests a waiver of the 30-day notice requirement for tariff filings, which the May 7 Order contemplated, so that MoGas can commence interstate service on June 1, 2008. MoGas explains that given the length of time since the Applicants filed their original certificate application and the fact that it has new service agreements with all existing customers, no one will be prejudiced by granting a waiver of the 30-day notice requirement. MoGas also notes that it has a pending application in Docket No. CP07-450-000 for authority to add compression to its system in order to meet new market demand from customers that desired service on February 1, 2008. According to MoGas, permitting it to go into service on June 1, 2008 will enable the Commission to resolve the issues in that proceeding sooner. MoGas also states that if the Commission determines on rehearing of a February 19, 2008 Order³ that MoGas rates should be increased, it reserves the right to impose a surcharge on its customers to recover any difference between the rates approved in the May 7 Order and the Order on Rehearing.

Interventions

4. Public notice of MoGas' filing was issued by the Commission on May 21, 2008. On May 27, 2008, the Missouri Public Service Commission (MoPSC) filed comments and on May 28, 2008, MoGas filed an answer to the MoPSC's comments. The substance of the comments and answer are discussed below. No new motions to intervene, notices of intervention or protests were filed.

Discussion

5. The Commission finds that MoGas has complied with the May 7 Order. It revised its rates for Zone 1 as directed. Therefore, we accept MoGas' proposed tariff sheet effective June 1, 2008. Further, we will grant MoGas' requested waiver of the 30-day notice requirement because MoGas has demonstrated good cause to warrant our doing so.

6. In its comments, MoPSC states that the April 20, 2007 Certificate Order⁴ granted the Applicants authority to complete several transactions, including the transfer and

² A safe harbor agreement would consist of the service agreement provided for Part 284 transportation in MoGas' tariff, but the rate for service would be the Missouri Public Service Commission (MoPSC)-approved rate that a customer was paying on April 20, 2007. The safe harbor agreement would be treated as a negotiated rate agreement.

³ *Missouri Interstate Gas, LLC*, 122 FERC ¶ 61,136 (2008).

⁴ *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074 (2007).

abandonment of facilities, in order to accomplish the merger of their pipeline systems into a single one that would operate as a new interstate pipeline. The MoPSC points out that Ordering Paragraph (E) of the certificate order required that these transactions be completed within one year of the date of the order. The MoPSC also indicates that Ordering Paragraph (K) of the Certificate Order conditioned the certificate authorizations upon MoGas' compliance with section 157.20(b) of the Commission's regulations, which also provides that projects authorized in a Certificate Order be available for regular performance within the period of time specified in the order (in this case one year). The MoPSC states that April 20, 2008 was the one-year anniversary of the Certificate Order and to the best of its knowledge the transactions authorized have not been completed. Likewise, MoGas has not requested an extension of the time frame specified in Ordering Paragraph (E).

7. In its answer to the MoPSC's comments, MoGas asserts that the MoPSC's filing is yet again another attempt to delay MoGas' in-service day. It emphasizes that "[t]he contemplated transactions cannot take place absent an approved FERC tariff under which the consolidated companies will render jurisdictional service."⁵ It notes that if the merger was implemented before Commission approval was received, no entity would be authorized to provide service to the nonjurisdictional pipelines' existing customers.

8. The Commission does not agree with the MoPSC's contention that MoGas or the Applicants failed to comply with Ordering Paragraph (E) of the April 20, 2007 Certificate Order or with section 157.20(b) of the Commission's regulations. The Commission sets a reasonable time frame within which a pipeline project must be available for service in order to assure that the circumstances on which the Commission based its finding that a project is required by the public interest and convenience have not materially changed. A request for waiver is required when a pipeline cannot meet the time limit set in the Certificate Order in order to advise the Commission of the reason why service will not commence over the project.

9. In this proceeding, however, the Commission has been aware since requests for rehearing of the April 20, 2007 Certificate Order were filed that additional action by the Commission was required before MoGas could commence interstate service. Among other things, many issues regarding the proposed rates and tariff as well as the underlying need for the project were raised in the requests for rehearing. Additionally, on July 5, 2007, MoGas filed revised tariff provisions and rates in compliance with the April 20, 2007 Order and requested an in-service date of October 1, 2007. Further, the Commission was aware that the in-service date specified in the Certificate Order was approaching when it issued its February 19, 2008 Order addressing the requests for rehearing of the Certificate Order and MoGas' July 5, 2007 compliance filing. On

⁵ MoGas' May 28, 2007 Answer at 3.

February 29, 2008, MoGas made a compliance filing in response to the February 19, 2008 Order on Rehearing in which it requested an in-service date of April 1, 2008. However, the Commission issued its response on May 7, after MoGas' requested April 2008 in-service date. Thus, the Commission implicitly extended the in-service deadline imposed in Ordering Paragraph (E) until it approved and accepted MoGas' proposed rates and tariff with a specified effective date, which we are doing in this order.

10. In its comments, MoPSC states that it does not concede that MoGas would have any right to impose a surcharge on its customers if the Commission increases MoGas' initial rates on rehearing of the February 29, 2008 Order and that it reserves the right to challenge any such proposed surcharge. The issue of a surcharge is not before the Commission in this compliance proceeding. Before such a surcharge could be imposed, MoGas would have to make an appropriate NGA section 4 filing to change the approved initial rates. MoPSC will have the right at that time to express its view of any proposed surcharge.

Conclusion

11. For all of the above reasons, the Commission accepts MoGas' tariff sheet revising its rates consistent with the May 7 Order to be effective June 1, 2008.

The Commission orders:

First Revised Original Sheet No. 5 of MoGas' FERC Gas Tariff, First Revised Volume No.1, is accepted effective June 1, 2008 and its request for waiver of the 30-day notice requirement is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.